REMARKS/ARGUMENTS

The Applicants have carefully considered this application in connection with the Examiner's Action and respectfully request reconsideration of this application in view of the foregoing amendment and the following remarks.

The Applicants originally submitted Claims 1-10 in the application. Previously, the Applicants elected Claims 1-8 and withdrew Claims 9-10. The Examiner then issued a Species Election and the Applicants elected Claims 1-3 and 5-7 and withdrew Claims 4 and 8. Presently, the Applicants have amended Claims 1, 2, and 7, and have not amended, canceled or added any other claims. Accordingly, Claims 1-3 and 5-7 are currently pending in the application.

I. Objection to Drawings

The Examiner has objected to the drawings as being incomplete. More specifically, the Examiner has objected to Figures 1-4 as failing to contain a legend such as --Prior Art--. Accordingly, the Applicants are submitting corrected drawings herewith.

II. Rejection of Claim 7 under 37 U.S.C. §112

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Examiner asserts that there is no antecedent basis for "electrolyte

fluid" found in line 5 of claim 7. Accordingly, the Applicants have amended Claim 7 to correct this inadvertent error.

III. Rejection of Claims 1-3 and 5-7 under Non-Statutory Double Patenting

The Examiner has provisionally rejected Claims 1-3 and 5-7 on the ground of non-statutory obviousness-type double patenting over Claims 1-7 and 10-13 of copending Applicant No. 10/803,576. The Applicants respectfully disagree with the Examiner's provisional non-statutory obviousness-type double patenting rejection of Claims 1-3 and 5-7, as argued below.

The Federal Circuit and its predecessor, the United States Court of Customs and Patent Appeals, recognized the need to fashion a doctrine of non-statutory double patenting (also known as "obviousness-type" double patenting) to prevent the issuance of a patent on claims that are nearly identical to or simply an obvious extension of claims in an earlier patent. *Geneva, et al. v. Glaxosmithkline PLC, et al.*, 349 F.3d 1373, 1377-78 (Fed. Cir. 2003). This doctrine was derived, based upon public policy, to prevent an Applicant from extending patent protection for an invention *beyond the statutory term* of an earlier-issued patent by claiming only a slight variant of the earlier patent. *Id.*

Both the instant case and Applicant No. 10/803,576 were filed on March 18, 2004. As such, both the instant case and Applicant No. 10/803,576 have the same effective filing date. Accordingly, both the instant case and Applicant No. 10/803,576 have the exact same statutory term date. Therefore, a non-statutory obviousness-type double patenting rejection is improper in the instant case – the policy reasons for issuing a non-statutory obviousness-type double patenting

rejection are missing. Thus, the Applicants respectfully request the Examiner to withdraw the non-statutory obviousness-type double patenting rejection of Claims 1-3 and 5-7 and allow issuance thereof.

IV. Rejection of Claims 1-3 and 5-7 under 35 U.S.C. §102

The Examiner has rejected Claims 1-3 and 5-7 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Publication No. 2005/0106459 to Kroupenkine *et al.* ("Kroup"). Independent Claims 1 and 7 currently include the element, in one form or another, that an electrode has a plurality of separate cells. Kroup, as applied by the Examiner, fails to disclose an electrode that has a plurality of separate cells, as is currently claimed.

Therefore, Kroup does not disclose each and every element of the claimed invention and as such, is not an anticipating reference. Because Claims 2-3 and 5-6 are dependent upon Claim 1, Kroup also cannot be an anticipating reference for Claims 2-3 and 5-6. Accordingly, the Applicants respectfully request the Examiner to withdraw the §102 rejection with respect to these Claims.

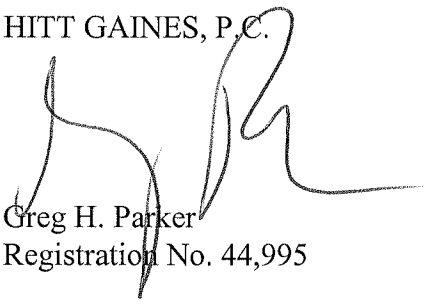
V. Conclusion

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-3 and 5-7.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

HITT GAINES, P.C.



Greg H. Parker
Registration No. 44,995

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P.O. Box 832570
Richardson, Texas 75083
(972) 480-8800